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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

12 ATARI INTERACTIVE, INC.,

13 Plaintiff,

14 vs.

15 REDBUBBLE, INC.,

16 Defendant.

17 AND RELATED ACTIONS
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Case No. 4:18-cv-03451-JST

[Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST; and 4:19-cv-00264-JST]

DECLARATION OF MATTHEW L. VENEZIA IN SUPPORT OF PLAINTIFF ATARI INTERACTIVE INC.'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE UNDER SEAL PORTIONS OF ITS MOTION FOR SUMMARY JUDGMENT PURSUANT TO L.R. 79-5

Judge: Hon. Jon S. Tigar

Date: July 8, 2020

Time: 2:00 pm

Crtrm.: 9

DECLARATION OF MATTHEW L. VENEZIA

I, Matthew L. Venezia, declare and state as follows:

1. I am an attorney at law, duly admitted to practice before this Court and all courts of the State of California. I am an associate with Browne George Ross LLP, counsel of record for Plaintiff Atari Interactive, Inc. (“Atari”) in this matter. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could and would competently testify thereto.

2. Pursuant to L.R. 79-5(d)(1)(A), I submit this declaration in support of Atari’s Administrative Motion for Leave to File Under Seal.

3. Atari seeks to use evidence in support of its Motion for Summary Judgment designated as “Confidential” by Redbubble, Inc. (“Redbubble”) pursuant to this matter’s Stipulated Protective Order (the “Redbubble-Designated Materials”). (Dkt. No. 54.) The following materials contain such information:

- The chart produced by Redbubble, attached as Exhibit A-2 to the Declaration of Keith J. Wesley in Support of Atari’s Motion for Summary Judgment (the “Wesley Decl.”)
- Excerpts from the deposition of Arnaud Deshais, attached as Exhibit B to the Wesley Decl.;
- Excerpts and exhibits 1044, 1049, and 1054 from the deposition of James N. Toy, attached as Exhibit D to the Wesley Decl.

4. Atari seeks to use evidence in support of its Motion for Summary Judgment that includes its trade secrets, commercially sensitive information, and agreements subject to confidentiality provisions (the “Atari Confidential Materials”). The following documents contain such information:

- The Declaration of Frederic Chesnais (“Chesnais Decl.”), ¶ 20, which contains commercially sensitive information concerning Atari’s licensing revenue.
- Exhibit E to the Chesnais Decl., which includes Atari’s licensing agreements with third-party apparel companies—such agreements including express confidentiality agreements and including Atari’s trade secrets and commercially sensitive information.

5. Atari’s Motion for Summary Judgment quotes and/or paraphrases the Redbubble-Designated Materials and the Atari Confidential Materials.

6. Documents may be sealed if there is “good cause” or, if “the motion is more than tangentially related to the merits of the case,” there are “compelling reasons” for sealing. *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101, 1105, 1106 (9th Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to release trade secrets.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon*, 435 U.S. at 598). Other examples of compelling reasons are where the material may reveal “‘sources of business information that might harm a litigant’s competitive standing.’” *Center for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*, 435 U.S. at 598-99). Sensitive financial information also satisfies the compelling reasons standard. *Sw. Carpenters Pension Trust v. Paramount Scaffold, Inc.*, No. 2:16-cv-6989-ODW (GJSx), 2018 WL 6016134, at *1 (C.D. Cal. Jan. 12, 2018). A compelling reason exists here given the highly sensitive nature of Atari’s commercially sensitive and trade secret information, in addition to the express confidentiality agreements contained in its licensing agreements.

7. To my knowledge, Redbubble does not oppose the sealing of these documents.

Executed this 29th day of April 2020, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Matthew L. Venezia

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I electronically filed the foregoing **DECLARATION OF MATTHEW L. VENEZIA IN SUPPORT OF PLAINTIFF ATARI INTERACTIVE INC.'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE UNDER SEAL PORTIONS OF ITS MOTION FOR SUMMARY JUDGMENT PURSUANT TO L.R. 79-5** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

SERVICE LIST

Atari Interactive, Inc. v. Redbubble Inc.
U.S.D.C. N.D. CA, Oakland Division Case No. 4:18-CV-03451-JST
[Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST;
and 19-cv-00264-JST]

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